

**STATEMENT OF
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FEDEX GROUND PACKAGE SYSTEM, INC.
BEFORE THE
THE MICHIGAN HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON EDUCATION AND LABOR
H.B. 5962
May 5, 2010**

Good afternoon Mr. Chairman, and members of the Committee, my name is Gary D. Dunbar. I am an attorney with FedEx Ground Package System, Inc., based in Pittsburgh, Pennsylvania.

On behalf of FedEx Ground, I want to thank the Committee for the opportunity to appear here today.

FEDEX GROUND PRESENCE IN MICHIGAN

If I may, let me begin by providing you with some information regarding FedEx Ground's presence in Michigan. FedEx Ground has been an employer in Michigan since 1985 when the company commenced operations. FedEx Ground currently employs 1064 in the state. We are, of course, proud of these employees. They work hard every day to serve our customers, and FedEx Ground is committed to paying all taxes and fees related to their work, as required by state law.

FedEx Ground is also proud of the 380 independent contractors -- and their many employees -- who support our network by providing pickup and delivery services in Michigan. All 380 have voluntarily entered into an independent contractor relationship by signing an operating agreement that spells out the pick-up and delivery activities and service expectations to be performed in support of our network. Included in the agreement, importantly, is a requirement that each independent contractor comply with all federal, state and local laws, regulations and ordinances. In fact, failure to comply with this provision is a breach of contract and basis for contract termination. And FedEx has terminated contracts for such breaches.

THE CONTRACTORS UNDER AGREEMENT TO FEDEX GROUND ARE SMALL BUSINESSES

The FedEx Ground independent contractors are small business owners, plain and simple. They use their own initiative and skills to manage and operate their businesses. They have a transferable interest in the work areas they service. They own the equipment that they use to service their work areas. They choose and hire the employees that drive their equipment. And they supervise the employees they hire.

The small businesses under agreement to FedEx Ground are not paid by the hour. They earn in proportion to how well they satisfy customers and how well they produce the results they have contracted to provide. In Michigan, in 2009, these small businesses earned up to \$948,078. More than 80% grossed in excess of \$80,000, almost 60% in excess of \$100,000, and 40% in excess of \$120,000.

Like millions of small business owners across the U.S., these contractors are responsible for paying federal, state and local taxes, as well as their own labor costs. They are also responsible for paying workers' compensation coverage on those they hire, unemployment insurance premiums, payroll taxes, disability insurance premiums, social security taxes, and the like.

FedEx Ground has worked with independent contractors for a quarter century. The company made the decision to utilize independent contractors back in 1985, because we believed they would help us deliver reliable, cost-effective service in a market that was about to become intensely competitive. We were right. As small business owners with a personal stake in our company's success, they showed flexibility, drive and efficiency not often found in a traditional driver workforce. These factors were integral to successfully launching this company against a much larger competitor, and they remain competitive differentiators today.

SMALL BUSINESSES ARE ESPECIALLY IMPORTANT TO MICHIGAN

Independent contracting is a well-established industry practice. These small businesses have been, and continue to be, the norm in the trucking industry. And, in today's economy, individuals are turning more and more to small business contracting as a growing, alternative work style. Not only

that, but more and more people are turning to small businesses for their employment. In Michigan, for example, the people employed by the contractors under agreement to FedEx Ground out number the contractors that employ them by more than 2 to 1. It is difficult to imagine any state, Michigan in particular, wanting to do anything to impinge on this very favorable development, as the proposed legislation is certain to do.

THE PROPOSAL IS UNNECESSARY AND INTIMIDATING TO SMALL BUSINESS

FedEx Ground opposes the proposed legislation for a number of reasons.

First, the company firmly believes that its independent contractors are properly classified as small business owners. I mention for the record two recent decisions handed down last year – one in the D.C. Circuit Court of Appeals and another in Washington State Court – validating our long-standing position that FedEx Ground contractors are properly classified. In addition, we have taken significant steps in California, New Hampshire and Maryland to strengthen our future ability to work with independent contractors in light of the changing legal and regulatory environments in those states. With the transition to an all multiple-work area contractor network in California a few years ago, the company implemented a system-wide, comprehensive Compliance Disclosure process, which requires multiple work area contractors to certify on an annual basis their compliance with state and federal laws, including workers' compensation and other payroll-related laws.

Second, as I read Michigan law, if a particular person is misclassified, or if a contractor is not properly covering its employees for workers' compensation purposes, a principal, FedEx Ground for example, would already be on the hook for coverage and damages under Section 171, which the proposed legislation is amending.

Third, FedEx ground has not found the state Attorneys General to be either disinclined or lacking sufficient legal authority to address misclassification and non-reporting issues in their respective states.

Fourth, even if states are not inclined to pursue misclassification issues, plaintiffs' attorneys are, and there is ample law already on the books to facilitate them doing so. Thus, FedEx Ground does not support holding companies criminally liable for misclassifications, even competitors, that money damages are more than adequate to remedy the issue the legislation is aimed at addressing.

Thank you again for the opportunity to appear before the Committee.